

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 11966,)
11967, 11968, 11969, 11970,)
11971, 11973, 12364, 12365,)
12720, 12721, 12722, 12723, and)
12724, and Licenses 9956 and)
9957, on permitted Applications)
5625, 5626, 4627, 5628, 9363,)
9364, 9365, 15374, 15375, 15376,)
16767, 17374, 17375, and 17376,)
and on Licensed Applications)
10588 and 15424 of)
)
UNITED STATES BUREAU OF)
RECLAMATION.)
)

ORDER: WR 91-01

ORDER AMENDING ORDER WR 90-5

BY THE BOARD:

1.0 INTRODUCTION

Order WR 90-5 having established terms and conditions for fishery protection in the upper Sacramento River below Shasta Dam, Keswick Dam, and the Spring Creek Power Plant; litigation having been filed inquiring into the validity of Order WR 90-5 (United States v. State Water Resources Control Board, E.D. Cal. No. CIV-S-90-0731 RAR/JFM, filed June 6, 1990; Central Valley Project Water Association v. State of California, Sacramento County Superior Court No. 364286, filed June 6, 1990); the parties to the

litigation having negotiated a proposed settlement involving amendment of Order WR 90-5 and dismissal of the pending litigation; a public meeting having been held on January 10, 1991 to consider approving execution of the proposed settlement and adopting the amendments proposed therein, the Board finds as follows:

2.0

FINDINGS

On May 2, 1990, the State Water Resources Control Board adopted Order WR 90-5. The order amends the water right permits and licenses held by the United States Bureau of Reclamation for Shasta Dam, Keswick Dam, and the Spring Creek Power Plant. The order enforces the water quality objective for temperature established by the applicable water quality control plan, as well as the requirements of the public trust doctrine and the constitutional prohibition against waste or unreasonable use or unreasonable method of use or diversion of water. The order sets terms and conditions for the control of temperature and the protection of the fishery in the upper Sacramento River. It includes a schedule of compliance for preparation of environmental documentation, monitoring and reporting requirements, and a requirement that a temperature control device be installed at Shasta Dam.

The dates of compliance for the temperature control device and for the analysis of permit terms and conditions were based on estimates provided by the Bureau of Reclamation during the hearing. The order's requirements are interim, and may be revised after completion of the analyses required in the order.

- 1.2 In the two lawsuits, the Bureau of Reclamation and the Central Valley Project Water Association allege that the State Water Resources Control Board violated the California Environmental Quality Act when it adopted Water Right Order WR 90-5, and seek to have Order WR 90-5 set aside. The parties to the litigation have negotiated a settlement of the issues in the two lawsuits. The terms of the settlement are set forth in two proposed Stipulated Dismissals Without Prejudice and Orders, copies of which are attached. The Stipulated Dismissals provide that the two lawsuits shall be dismissed. The proposed Stipulated Dismissals provide for amendments to Order WR 90-5 to extend the compliance schedule in accordance with the Bureau of Reclamation's revised estimate for all compliance dates, clarify the procedures for the monitoring program, provide for environmental documentation when the Board adopts specified types of terms and

conditions, and provide for expiration of certain terms and conditions of Order WR 90-5 under specified conditions.

The Board has adopted a resolution authorizing the Attorney General to execute the Stipulated Dismissals on behalf of the Board. The Board finds that the proposed amendments to Order WR 90-5 will carry out its objectives in adopting Order WR 90-5, are reasonable in consideration of the Stipulated Dismissals, and therefore should be adopted in this Order.

ORDER

NOW, THEREFORE, IT IS ORDERED that the terms and conditions adopted by Order WR 90-5 are amended as follows:

1. Condition 2 at pages 55-56 is amended as follows:
 - a. The phrase "Subject to all the requirements of law, including the enactment by the Congress of any necessary legislation" is added at the beginning of Condition 2.
 - b. The "Tasks" and "Dates of Compliance" are amended to read:

TASK

DATE OF COMPLIANCE

- I. Shasta Reservoir Temperature Control Device
 - a. Circulate draft NEPA Document November 30, 1990
 - b. Adopt Final NEPA Document May 30, 1991
 - c. Complete Construction..... May 30, 1994

- II. Spring Creek Power Plant
 - a. Submit a plan of study for minimizing the warming of water to be discharged through the Spring Creek Power Plant March 31, 1992
 - b. Submit designs and a construction schedule for facilities or identify alternatives to minimize the warming of water to be discharged through Spring Creek Power Plant, together with a schedule for NEPA documentation, if required September 30, 1993
 - c. Submit a complete Final Planning Report and any required NEPA document for facilities or alternatives to minimize the warming of water to be discharged through the Spring Creek Power Plant..... September 30, 1995

- III. Construction Funding
 - a. Submit analysis of alternative sources for construction of the Shasta Reservoir temperature control device..... May 30, 1991
 - b. Submit analysis of alternative funding sources for construction of facilities or alternatives to minimize the warming of water to be discharged through the Spring Creek Power Plant March 15, 1995

- IV. Permit Terms
 - a. Submit analysis of permit terms and conditions with supporting data as described below..... March 15, 1995

- c. The last sentence of Condition 2 is amended to read:

The analysis of any environmental effect shall be in the form of a draft Environmental Impact Report (or a combined draft Environmental Impact Report and Environmental Impact Statement if an Environmental Impact Statement is required under federal law), addressing Permittee's actions to carry out fishery protection for the upper Sacramento River, including Permittee's actions to comply with requirements set by the State Water Resources Control Board. The Board shall initiate any consultation required as part of the preparation of a draft Environmental Impact Report as early as reasonably possible. The Board shall inform Permittee in writing of the information, required by the California Environmental Quality Act to be included in a draft Environmental Impact Report addressing the terms and conditions identified above, including any information determined by the Board to be necessary as a result of comments submitted pursuant to 14 California Code of Regulations Sections 15082 and 15083.

2. Condition 3 on pages 56-59 of Order WR 90-5 is amended as follows:

- a. The phrase "collect water samples from" is deleted from the first line of the second paragraph of said condition and the phrase "measure water quality at the" is substituted in its place.
- b. The column titled "SAMPLING FREQUENCY" is retitled "MEASUREMENT FREQUENCY".

IT IS FURTHER ORDERED that the following conditions of Order WR 90-5 as amended by this order shall expire upon the conditions specified in Paragraph 3 or Paragraph 6 of the Stipulated Dismissal Without Prejudice and Order, where applicable:
Condition 1 on pages 54 and 55, Condition 2 on pages 55 and 56, Condition 1 on pages 60 and 61, Condition 2 on page 61, and the unnumbered condition on pages 61 and 62.

IT IS FURTHER ORDERED that this order shall take effect upon dismissal of both of the above-cited lawsuits pending against the Board as provided in the Stipulated Dismissals Without Prejudice and Orders.

CERTIFICATION

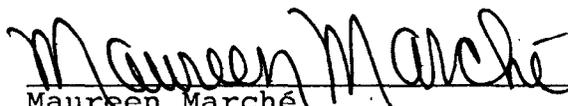
The undersigned, Administrative Assistant to the State Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 10, 1991.

AYE: W. Don Maughan
 Eliseo M. Samaniego
 John Caffrey

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None


Maureen Marché
Administrative Assistant
to the Board

